



April 27, 1999

Mr. Kevin McCalla
Director, General Law Division
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR99-1131

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 124038.

The Texas Natural Resource Conservation Commission (the “commission”) received an open records request for, among other things, certain information pertaining to four particular job postings. Specifically, the requestor seeks “interview questions and answers, original interview notes, interview scores, application scores, and final scores of all applicants interviewed for” each of the respective job postings and any other “documentation relating to the final selection of the successful candidate.” You contend that the requested information is excepted from disclosure under section 552.122 of the Government Code.

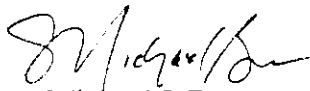
Section 552.122(b) of the Government Code excepts from required public disclosure “test item[s] developed by a . . . governmental body.” Section 552.122(b) is applicable to test items, but only where the test items constitute a “standard means by which an individual’s or group’s knowledge or ability in a particular area is evaluated.” Open Records Decision No. 626 at 6 (1994). The exception does not apply to evaluations of an employee’s overall job performance or suitability. *Id.* Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. *Id.*

After reviewing the requested documents, we conclude that some of the interview questions you seek to withhold are the type of information that section 552.122 was intended to protect. These questions test the applicant’s technical and practical knowledge of the environment and pollutants and consequently come under the protection of section 552.122(b). Furthermore, we conclude that the release of the responses to these test items would reveal the substance of the questions.

Other questions you seek to withhold do not test the applicants' knowledge or ability in a particular area. The required subjective responses and subjective evaluations of those responses to these questions address the applicant's overall suitability for employment rather than his or her knowledge or ability to perform assigned work. Such questions and answers are not excepted from public disclosure under section 552.122(b). The commission, therefore, may withhold only those interview items we have marked in Exhibit B as being excepted from public disclosure pursuant to section 552.122(b); the remaining information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Michael J. Burns
Assistant Attorney General
Open Records Division

MJB/RWP/eaf

Ref: ID# 124038

encl. Submitted documents

cc: Ms. Jane Williams
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(w/o enclosures)